



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 20] CHANDIGARH, WEDNESDAY, FEBRUARY 23, 2022 (PHALGUNA 04, 1943 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 17th February, 2022

No. 13/1/9837-HII(2)-2022/2301.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 29/2020, dated 07.01.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAVI KUMAR S/O SHRI SATBIR SINGH, R/O POST OFFICE RAI 20 MILL, VILLAGE JATHEDI, DISTRICT SONIPAT, HARYANA. (Workman)

AND

CHAIRMAN, HARYANA STATE SOCIAL WELFARE ADVISORY BOARD, SCO NO. 87/88, 2ND FLOOR, SECTOR 17D, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in nutshell is that he was appointed as Driver on 07.07.2014 vide order dated 24.06.2014 and all of sudden the management terminated his services vide order dated 10.10.2019 without giving any notice / pay or compensation. Juniors to workman have been retained and new persons were appointed after termination of his services. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act.

3. During the pendency of the present industrial dispute, the workman made the following statement:—

"I have settled my dispute with the management and have joined my duties with the management. The present industrial dispute may kindly be disposed off accordingly."

4. In view of the above statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Signature Not Verified

Digitally Signed by
Jatinder Kumar
On 23/02/2023
16:13:24 IST
Reason: Published
Location:

(Sd.) . . . ,

(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

(153)

*This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>*

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 17th February, 2022

No. 13/1/9374-HII(2)-2022/2303.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 26/2017, dated 16.12.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT/GENERAL SECRETARY, PUNJAB ROADWAYS EMPLOYEES UNION, C/O
HOUSE NO. 191, SECTOR 45-A, CHANDIGARH (Workers' Union)

AND

1. DIRECTOR TRANSPORT, PUNJAB, SECTOR 17, CHANDIGARH.
2. GENERAL MANAGER, PUNJAB ROADWAYS, LUDHIANA, PUNJAB (Management).

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9374-HII(2)-2017/12158, dated 06.06.2017.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9374-HII(2)-2017/12158, dated 06.06.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the demand raised in the demand notice dated 24.04.2015 by President/General Secretary, Punjab Roadways Employees Union, R/o C/o, House No. 191, Sector 45-A, Chandigarh And (i) The Director, Transport Punjab, Sector 17, Chandigarh (2) the General Manager, Punjab Roadways, Ludhiana, Punjab, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. The President / General Secretary, Punjab Roadways Employees Union (*hereinafter called "workers' union"*) had served demand notice dated 24.04.2015 in respect of Shri Balwinder Singh S/o Shri Puran Singh - Ex-Conductor No.286/289, Punjab Roadways, Ludhiana (*hereinafter called "workman"*) upon the Director, Transport Punjab & Another (*hereinafter called "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter called "ID Act"*). Upon notice, the workers' union appeared through its representative. Demand notice was ordered to be treated as statement of claim. Case of the workers' union in brief is that the workman was selected and was appointed as Conductor long time back. Lastly he was holding Conductor No.286, Punjab Roadways, Ludhiana whereas at the time of passing of impugned order his number was 289. He was a regular and confirmed employee of the management and has retired on 29.02.2012. He was placed under suspension and a charge sheet was issued against him for an allegation that after collecting fare he did not issue tickets. The workman filed reply that the passengers, who had boarded the bus were yet to be issued the tickets, at the time of entering the bus the checking staff had taken in their possession copies of the tickets and punch and they collected the fare from the passengers as per their will and issued them the tickets and recorded a note on the waybill but when the workman raised the objection against their illegalities, they threatened to level harsher allegation of misbehavior against him. Neither cash of the workman was checked nor statement of any passenger was recorded nor any passenger was charged 10 times and no without ticket passenger was travelling from whom the workman had taken fare. The punishing authority without appreciating the same had appointed an Inquiry Officer to go into the charges. During the enquiry statement of departmental witnesses were recorded, who had admitted in cross-examination that no statement of any passenger was taken and no cash was checked which is against the instructions of the department. No effort was made to call any passenger to depose in the enquiry and to face the test of cross-examination. The workman gave his defense reiterating his stand but the Inquiry Officer has proved the allegations without discussing anything or returning any findings as to why version stated in reply to the charge sheet and also defense of the workman is not trustworthy or deserves to be ignored. Thereafter a show cause was issued to the workman to which even he submitted his explanation but the punishing authority without considering it

had ordered stoppage of his ten increments with cumulative effect vide order No.9462 dated 18.09.1988. The workman had preferred a departmental appeal to D.M. the then competent authority, which is dismissed vide order dated 04.01.1999 on the ground of it being time barred. The Office of D.M. now has merged with DST, Punjab. Action on the part of authorities of infliction of aforesaid punishments on the workman is illegal, null & void, malafide, arbitrary and also against the rules and principals of natural justice on the grounds that neither any cash was checked nor statement of any passenger recorded. Neither the Inquiry Officer nor the punishing authority and not even the appellate authority has failed to appreciate that on the fateful day there was over crowded bus which had hardly covered a short distance up to checking point within which time it was humanly impossible to issue tickets to the passengers. No fair & proper inquiry was held before passing the impugned order. The workman was not afforded fair & proper/full opportunity by the competent authority. The workman was punished on the basis of no evidence against him. Impugned order is non-speaking in nature as in support of conclusions no reasoning of whatsoever nature is given. The workman was not afforded with any personal hearing. No separate show-cause notice was served before forfeiting full salary during period of suspension. The cause of action has accrued, head office of the management is situated at Chandigarh and also that his appeal was rejected at Chandigarh so demand notice is fully maintainable. Various deaths have taken place in the family of the workman from time to time resulting in to delay in filling present demand notice. Ultimately, it is prayed that impugned order of stoppage of ten increments of the workman with cumulative effect vide Order No.9462 dated 18.09.1988 and order of rejection of appeal on 04.01.1999 be set aside and the workman be paid all consequential benefits which includes payment of arrears to him as well.

3. The management contested the case of the workers' union and filed written statement that the workman has not come to the court clean hands and suppressed the material facts from the Hon'ble court. He had not disclosed that in the enquiry proceedings applicant was given full opportunity of giving his defence and cross-examine the Government witnesses. All the orders passed by the higher authorities were passed after due consideration and after giving opportunity of personal hearing to the workman. The workman is stopped by his own act & conduct as the increments were stopped in the year 1988 and he filed the appeal before the Divisional Manager in the year 1999 after eleven years, without explaining any sufficient reason for delay in filing the appeal. The present demand notice has been given to the management after 16 years and the same is also without any explanation for the delay. The present notice is liable to be dismissed on this score alone. On merits, it is pleaded that it is the duty of the workman to depose the passengers in defence to show that he has not done any time contrary. Show cause notice was issued to the workman, which was duly replied by the workman. The orders were passed after due consideration and adopting the principles of natural justice. The checking staff had adopted all the guidelines in proper way while checking. The Inquiry Officer, punishing authority and appellate authority passed the orders after adopting all the procedure and principles of natural justice and after giving opportunity of personal hearing to the workman. The workman was punished after due consideration of facts and evidence came on record. The orders are fully speaking one. Opportunity of personal hearing was given to the workman before passing each and every order. The Head Office of the management is situated at Chandigarh and appeal of the workman was also rejected at Chandigarh but no cause of action was accrued to the workman as the order as well as inquiry was conducted in presence of the workman. The workman had concocted story to condone the delay and get sympathy of the court. Other averments of the case of the workers' union were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workers' union filed replication reiterating the averments of its case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 24.04.2015 by the union is genuine & justified, if so, to what effect and to what relief the union / workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1closed the evidence. On the other hand, the management examined Shri Krishan Pal - Dealing Clerk of Conductor Staff, Punjab Roadways, Ludhiana Depot as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workers' union and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workers' union and to discharge the same learned representative for the worker's union has examined the workman as AW1, who deposed that he was selected and appointed as Conductor long time back and he was regular and confirmed employee of the management and has retired on 29.02.2012. He was placed under suspension and a charge sheet was issued to him, which was duly replied explaining his position, however, the punishing authority without appreciating the same had appointed an Inquiry Officer to go into the charges. He further deposed that during the inquiry proceedings the departmental witnesses have admitted in cross-examination that no statement of any passenger was taken and no cash was checked. The workman gave his defence reiterating his stand but the Inquiry Officer had proved the allegations without discussing anything or returning any findings in support of his conclusion. He also deposed that a show cause notice was issued to him to which he submitted his explanation but the punishing authority without considering it had ordered stoppage of his ten increments with cumulative effect *vide* order No. 9462 dated 18.09.1988. He had preferred a departmental appeal to D.M. the then competent authority, which was dismissed *vide* order dated 04.01.1999 on the ground being time barred. He further deposed that neither the Inquiry Officer nor the punishing authority and not even the appellate authority has appreciated that the bus was over crowded, which had hardly covered as short distance upto checking point within which time it was humanly impossible to issue tickets to the passengers stated in the charge sheet. No fair & proper inquiry was held against the workman before passing impugned order. The workman was punished on the basis of no evidence against him.

8. Learned representative for the workers' union has argued that the workman was selected and appointed as Conductor No.286, Punjab Roadways, Ludhiana. He was placed under suspension and a charge sheet was issued to him and he explained his position in a cogent manner but the punishing authority without appreciating the same appointed the Inquiry Officer and the Inquiry Officer conducted the inquiry in an unfair manner. No proper opportunity was granted to the workman. The workman was punished on the basis of no evidence. Further it is argued that the impugned order is non-speaking and he was not afforded any personal hearing. No separate show cause notice was served before forfeiting full salary during the period of suspension. The appellate authority had also dismissed his appeal without considering the merits of the case. No statement of passengers has been recorded. No cash was checked and no signature were obtained to the effect that he has confessed his guilty so the demand raised by the workers' union are genuine & justified. He placed reliance of citations *State of Haryana Versus Mohan Singh, All India SLJ 1985(1) 597 (P&H); State of Haryana Versus Bikar Singh, 2002(2) SLR 341 (P&H); General Manager, Pb. Roadways Versus Amir Chand, 2002(3) SLR 252 (P&H); U.P. State Road Transport Corporation & Others Versus Mahesh Kumar Mishra & Others, 2000(2) SCT 314 (SC); Parveen Kumar Versus State of Haryana, 2017(3) SCT 252 (P&H) and Saral Kumar Sharma Versus Canara Bank & Others, 2008(3) LLJ 190 (Raj.)* and prayed for allowing the reference.

9. On the other hand, learned Law Officer for the management has examined Shri Krishan Pal as MW1, who deposed that he is working as dealing Clerk in Punjab Roadways, Ludhiana Depot and has been authorised by the General Manager, Punjab Roadways, Ludhiana to appear and depose in this case. Copy of authority letter is Exhibit 'R1'. The workman was working as Conductor in Punjab Roadways, Ludhiana and on 06.10.1987 he was on duty with Bus No.2855 on the route of Batala to Barnala. The bus was checked by the checking team at about 18:25 P.M. and they found that 75 passengers were travelling, in which 4 passengers who were traveling to Raikot to Fazilka found without tickets. The passengers told that they had given the money to the Conductor but he did not issue the tickets. On that account the workman was charge sheeted and after holding a proper departmental inquiry as per Punjab Civil Service (Punishment & Appeal) Rules, 1970, order No.9462 dated 18.09.1988 was passed against the workman. The said order is legally valid and binding on the workman. There is no illegality, irrationality, invalidity or wednesbury unreasonableness in the order. Copy of inquiry file is Exhibit 'R1'. He further deposed that the workman had filed the appeal against the order

to the Secretary, State Transport, Punjab Chandigarh which was dismissed vide order dated 04.06.2013. Copy of the appeal file is Exhibit 'R2'. Both the orders under challenge have been passed against the workman after holding a proper departmental inquiry as per Punjab Civil Service (Punishment & Appeal) Rules, 1970. The workman had challenged the said orders after lapse of 19 to 20 years so the demand notice of the workman is time barred.

10. Learned Law Officer has argued that the present reference is not maintainable and time barred. Both the orders challenged by the workman have been passed after holding proper inquiry as per Punjab Civil Service (Punishment & Appeal) Rules, 1970 and they are legally binding upon him and there is illegality. He referred to the cross-examination of the workman and proved on record the copy of inquiry file Exhibit 'M2' and copy of appeal file Exhibit 'M3'. He prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed as Conductor No.286 with Punjab Roadways, Ludhiana and the workman was placed under suspension and a charge sheet was issued to him that after collecting fare he did not issue tickets to the passengers. Firstly, the workman himself explained his position in his evidence that passengers who had boarded the bus yet to be issue the tickets, at the time of entering the bus the checking staff had taken in their possession copies of the tickets and punch and they collected the fare from the passengers as per will and issued them tickets and recorded the note on the way bill. He himself stated that he raised objection against their illegality.

12. Further other argument by learned representative for the workers' union, no fair & proper inquiry was conducted and the workman was not given full & fair opportunity of being heard does not inspire the confidence as during the cross-examination before this Tribunal / Court he admitted that it is correct that on 06.10.1988 he was on duty with bus No.2855 enroute Batala to Barnala and the bus was checked by the checking staff. Some passengers were allegedly found travelling without tickets by the checking staff. He also admitted that the said without tickets passengers were travelling from Raikot to Dadhoor. He stated that the distance between Raikot to Dadhoor is about five kilometers. He was charge sheeted in the episode to which he submitted his explanation. An Inquiry Officer was appointed in the matter and during inquiry he had cross-examined the departmental witnesses and had also produced his defence. He was issued a show cause notice to which he submitted a reply. He was afforded personal hearing before passing the impugned order by the General Manager and he was supplied with copy of impugned order No.9462/18.09.1988. He preferred an appeal against this order which too was dismissed.

13. From the perusal of the statement of the workman it reveals that the workman himself is admitting that he has been given full opportunity of being heard. He duly cross-examined the witnesses of the department. During his statement in the inquiry he also admitted that un-punched tickets attached with the reports belongs to him and note given in the way bill was also given by him. This fact was admitted during the cross-examination of the workman in the inquiry file. So arguments raised by learned representative for the workers' union that statement of the passengers was recorded and cash of the workman was not checked and this is a case of no evidence is not tenable as it is well settled law that strict rule of evidence are not applicable to the departmental inquiry proceedings. Only requirement of law is that the allegations against the delinquent officer should be established by such evidence acting upon which a reasonable person acting reasonably and with the objectivity may arrive against the delinquent official. The Court exercising jurisdiction of judicial review would not interfere with the findings of fact arriving at the departmental inquiry proceedings except in a case of malafide. In this connection law is well settled by the Hon'ble Supreme Court in *Bank of India & Another Versus V. Degala Suryanarayanan, AIR 1991 2407*. Similarly in case *Union of India & Others Versus Himmat Singh Chahar, AIR 1999 SC 1980* Hon'ble Supreme Court of India has held that although the High Court is entitled to exercise its power to judicial review by invoking jurisdiction under Article 226 but would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether

there has been violation of principles of natural justice which vitiates the entire proceedings or that the authority exercising jurisdiction had not been vested with jurisdiction under the act. The said power of judicial review cannot be a power of an appellate authority permitting the High Court to re-appreciate the evidence in coming to the conclusion that the evidence is insufficient for the conclusion arrived by the competent authorities.

14. Further reliance is made on citation *Apparel Export Promotion Council Versus A.K. Chopra, AIR 1999 SC 625* in which while considering the scope of interference with the disciplinary matter and punishment the Hon'ble Supreme Court of India has held that the High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power / and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once finding of the fact based on appreciation of evidence recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an appellate authority, over factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities. Even insofar as imposition of penalty of punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court is exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the order are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process. Hence, citations referred by the workers' union are not directly applicable as facts are quite distinguishable and in the present case proper inquiry proper has been conducting after affording full opportunity to the workman as admitted by the workman during the cross-examination before this Court / Tribunal. It hardly makes any difference if no confessional statement of the workman was on the record.

15. Further reliance is made on case titled *Bhupinder Singh Versus State of Punjab & Others, CWP No.7809 of 1994 decided on 13.07.2012 by Hon'ble Punjab & Haryana High Court* wherein Hon'ble Punjab & Haryana High Court has held as under :—

"9. The charge against him is of non-issuing of tickets and misappropriation of ₹10/-on 21.07.1985. The punishing authority has, after taking into consideration the representation of the petitioner, reduced the proposed punishment of stoppage of 7 increments to 5 increments with cumulative effect and thus, taken a comparatively lenient view than the one proposed. In cases of misappropriation by bus conductor, the Hon'ble Apex Court has time and again held that once there is loss of faith in the employee then the High Court should not interfere in the punishment imposed and should sit in appeal over the decision of the employer. The Hon'ble Apex Court in *The Managing Director, The North-East Karnataka Road Transport Corporation Versus K.Murti, 2006(12) SCC 570*, has held as under :—

8. The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decision of this Court, one reported in *2002(10) SCC 330 (Regional Manager, RSRTC v. Ghanshyam Sharma)* which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above, case held that

*carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. The Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgement reported in 2001(1) SCT 787 (SC) : 2001(2) SCC 574 (**Karnataka SRTC v. B.S. Hullikatti**). In the said judgement, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited judgement reported in 2006(3) SCT 582 (SC) : 2006(6) SCC 187 (**Divisional Controller, N.E.K.R.T.C. v. H. Amaresh**). In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the Disciplinary Authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.*

9. *In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondent's conduct in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in the provisions of the Corporation C & D Regulations, 1971.*
10. *In the present case, the punishing authority has taken a lenient view and the submission made by the counsel for the petitioner that the petitioner could not appear before the enquiry officer on 04.07.1986 is not believable and it is apparent that it is an afterthought as discussed above. Resultantly, the present writ petition is devoid of any merit and there is no scope of interference in the orders passed by the punishing authority and the order dismissing the appeal. Writ petition is, accordingly, dismissed."*

16. In the light of discussion made above, the worker's union has failed to prove that the demand raised in the demand notice dated 24.04.2015 is genuine & justified. Accordingly, this issue is decided against the workers' union and in favour of the management.

Relief :

17. In the light of findings on the issue above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

The 16th December, 2021.

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 17th February, 2022

No. 13/1/9371-HII(2)-2022/2305.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 41/2017, dated 22.12.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJ KUMAR, SANTOSH KUMAR, RAVINDER PARKASH, VIRENDER KUMAR, TRIBHUHAN, NAND LAL, PREM SANKAR, SATYAVIR SINGH & VIPIN TIWARI, C/O #1115, VIKAS NAGAR, NEAR RAILWAY STATION, CHANDIGARH (Workmen)

AND

1. MICRON INSTRUMENTS PRIVATE LIMITED, PLOT NO. 143-B, INDUSTRIAL AREA, PHASE -I, CHANDIGARH.
2. LEHRI SOLUTIONS PRIVATE LIMITED, PLOT NO. 107, PHASE - 10, SAS NAGAR, MOHALI (Management).

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9371-HII(2)-2017/8966, dated 28.04.2017.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9371-HII(2)-2017/8966, dated 28.04.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the demand raised in the demand notice dated 12.09.2016 by S/Shri Raj Kumar, Santosh Kumar, Ravinder Parkash, Satyavir Singh and Vipin Tiwari And (1) M/s Micron Instruments Private Limited, Plot No.143-B, Industrial Area, Phase-I, Chandigarh (2) M/s Lehri Solutions Private Limited, Plot No. 107, Phase-10, S.A.S. Nagar, Mohali, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. S/Shri Raj Kumar & Others (*hereinafter called "workmen"*) had served demand notice dated 12.09.2016 upon M/s Micron Instruments Private Limited (*hereinafter called "management No.1"*) and M/s Lehri Solutions Private Limited (*hereinafter called "management No.2"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter called "ID Act"*). Upon notice, the workmen appeared through their representative. Demand notice was ordered to be treated as statement of claim. The demands of the workmen are as under :—

1. **Regularization of Contractors Workmen:**—At present about 218 workmen are working with M/s Micron Instruments Private Limited i.e. management No.1 through the contractor namely M/s Lehri Solutions Private Limited i.e. management No.2. The workmen are working in the factory passed long time and job of the workmen is permanent nature. On the permanent nature of work to keep contractor workmen to give them artificial break in job is illegal and also part of unfair labour practice adopted by both the managements. All the workmen may merge with the principal employer i.e. management No.1. According to Abolition of Contractor Labour Act, 1976 the workmen are entitled for equal benefits with the permanent employee of principal employer. All the benefits which were not paid to the contractor employee same may be paid to the contractor employee from the date of actual date of joining with previous arrears.
2. **Up-Gradation:**—Every workman may promote according to agreements of management No.1 with the union or according to applicable minimum wages notifications of U.T. Administration.

3. **Annual Increment:**—Every workmen may paid annual increments arrears equal to permanent employee of principal employer.
 4. **Night Allowance:**—Every workman may paid Night Allowance (as and when they worked in night shift according to the record of managements) arrears equal to permanent employee of principal employer.
 5. **Annual Casual Leaves, Sick Leaves & Earned Leaves:**—Every workman may allow 7 days casual leave, 7 days sick leave and 15 days earned leaves for every year to each workman arrears equal to permanent employee of principal employer from the previous arrear from the date of joining.
 6. **Bonus:**—Every workmen may paid balance bonus who has received less bonus as compared to permanent employee of principal employer.
3. Management No.1 contested the case of the workmen and filed written statement raising preliminary objection that no dispute as defined under Section 2(k) exists between the answering management and the persons named in the demand notice. There is no employer-employee relationship between the persons named in the demand notice and the answering management. In parawise reply to the demand notice it is pleaded that the persons employed through contractor, as per requirement, strictly in compliance of statutory provisions, standing orders and the periodic settlements arrived at between the answering management and recognized workers' union representing collective will of the employees. The workmen employed with management No.2 and paid by management No.2 on the terms & conditions agreed between the said employer and the employees have no right to claim any further benefit from the answering management having no relationship of employer-employee with the employees of management No.2. Other averments of the case of the workmen were denied and ultimately, it is prayed that the present reference be dismissed *qua* the answering management.

4. Management No.2 contested the case of the workmen and filed written statement raising preliminary objection that majority of the persons who moved the purported demand notice are no longer in service of the answering management. The relationship of master & servant is necessary ingredient for being a workman under Section 2(s) of the ID Act. Reply to the demands raised by the workmen are as under :—

1. **Regularization of Contractors Workmen:**—This demand of the workmen is illegal & unjustified and the same needs to be rejected.
2. **Up-Gradation:**—The workmen are paid as per the minimum rates of wages, which are notified from time to time.
3. **Annual Increment:**—This demand of the workmen is illegal & unjustified and the same needs to be rejected.
4. **Night Allowance:**—This demand of the workmen is illegal & unjustified and the same needs to be rejected.
5. **Annual Casual Leaves, Sick Leaves & Earned Leaves:**—This demand of the workmen is illegal & unjustified and the same needs to be rejected.
6. **Bonus:**—The workmen are paid bonus as per provisions of the Payment of Bonus Act, 1965.

Ultimately, it is prayed that the present reference be declined.

5. The workmen filed replication reiterating the averments of their case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether there is no employer-employee between management No.1 & 2 and the workmen ? OPM
2. Whether the present reference is not maintainable ? OPM-1

3. Whether the demands raised in the demand notice dated 12.09.2016 made by the workmen is genuine and justified, if so, to what effect and to what relief the workmen are entitled to, if any ? OPW

4. Relief.

6. During the pendency of the present reference, the parties settled their dispute amicably and the Senior Manager (Hr & Admin.) of management No.1 and General Manager of management No.2 made the following joint statement :—

"The management has agreed to settle the matter with the workman for a total sum of Rs.500/- each claimant/workman through cash towards all his claims. The workman shall not claim anything apart from it."

Upon which learned representative for the workmen made the following statement :—

"I have heard the statement of the respondents. We are ready for settlement as agreed above with the management and I have received today for an amount of Rs.50000/-through cash on behalf of claimants/ workman being representative. Accordingly, the matter has been disposed off against respondent No.1 and 2 as per compromise between the parties."

7. In the view of the above statements, the present reference is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

The 22nd December, 2021.

(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 17th February, 2022

No. 13/1/9450-HII(2)-2021/2341.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 26/2018, dated 30.11.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT GENERAL SECRETARY, CHANDIGARH GOVERNMENT TRANSPORT WORKERS' UNION (REGD.) NO.11, RECOG. NO.1, CHANDIGARH ADMINISTRATION, CHANDIGARH, PLOT NO.70, INDUSTRIAL AREA, PHASE - I, DEPOT NO.1, CHANDIGARH. (Workers' Union)

AND

DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING AND DIRECTOR TRANSPORT, UNION TERRITORY CHANDIGARH (Management).

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9450 HII(2)-2018/5422, dated 17.04.2018.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9450-HII(2)-2018/5424, dated 17.04.2018 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the demand raised in the demand notice dated 04.10.2017 by President/General Secretary, of Chandigarh Government Transport Workers' Union (Regd.) No.11, Recog. No.1, (Chandigarh Administration) Chandigarh, Plot No.70, Industrial Area, Phase - I, Depot No.1, Chandigarh AND The Divisional Manager, Chandigarh Transport Undertaking & Director Transport, Union Territory Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. The President / General Secretary, Chandigarh Government Transport Workers' Union (*hereinafter called "workers' union"*) had served demand notice dated 04.10.2017 in respect of Shri Davinder Singh - Storekeeper (*hereinafter called "workman"*) upon the Divisional Manager, Chandigarh Transport Undertaking & Director Transport, Union Territory Chandigarh (*hereinafter called "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter called "ID Act"*). Upon notice, the workers' union appeared through the workman. Demand notice was ordered to be treated as statement of claim. Case of the workers' union in brief is that the workman was appointed as Storekeeper by the management of Chandigarh Transport Undertaking, Chandigarh with effect from 24.11.1987. Since then the workman has served the management with utmost diligence & devotion and nothing adverse has been recorded in his service book. Shri Waryam Singh - Conductor No. 201 (Ex-Convenor, CT.U Workers Union) filed a complaint dated 07.06.1988 regarding the false documents and forging with Government against the workman and three others namely Shri Hardip Singh S/o Shri Kuldeep Singh, Painter Helper, Shri Jaspal Singh S/o Shri Gurdev Singh, DPA and Shri Gurcharanjit Singh, S.K. for submitting false experience certificate for entry in the Government service. On the basis of above said complaint, a regular departmental inquiry was initiated against all the above said officials and Shri H. S. Sood - Accounts Officer, C.T.U. Chandigarh was appointed as Inquiry Officer. A joint departmental inquiry against all above said four delinquent officials was being conducted by the Inquiry Officer. During the pendency of the departmental enquiry, incompliance of the order of the Home Secretary, Chandigarh Administration, Chandigarh (which is also the Appellate Authority as per the Punjab Civil Services (Punishment & Appeals) Rules, 1970) the workman was removed from service with immediate effect by the Divisional Manager, Chandigarh Transport Undertaking-Chandigarh vide its order dated 04.08.1989. No further action was taken against the other above said delinquent officials by the Chandigarh Administration and the Disciplinary Authority.

Orders of removal from services of workman were stayed by the Hon'ble Central Administrative Tribunal, Chandigarh but later on dismissed the original application of the workman and vacated the stay order. Resultantly the workman was removed from the service with effect from 03.11.1995. The workman challenged the order of the Hon'ble Central Administrative Tribunal, Chandigarh in the Hon'ble Supreme Court and SLP was allowed with direction to hear the original application of the workman a fresh as per the procedure of Law. The Hon'ble Central Administrative Tribunal, Chandigarh quashed the impugned order of the then Divisional Manager, CTU, Chandigarh whereby the services of the workman were removed with a further order to proceed with the necessary action in accordance with rule of law. The workman was reinstated on duty vide order No.378 dated 26.05.1997 by the Director Transport, Union Territory Chandigarh. He was served with show-cause notice vide memo.No.392/ECM/CT-I/98 dated 28.05.1998 by the Director Transport, Union Territory Chandigarh whereby it was proposed to impose upon the workman the penalty of termination of service. The workman replied the show cause notice on 24.06.1998 and he was heard personally on 26.09.2000. The Director Transport, Union Territory Chandigarh passed an order bearing No.661/ECM/CTU/II/DT/2K dated 29.09.2000 whereby the workman was reduced to the minimum of time scale for a period of five and it was further ordered that the workman will not earn increment of pay during the period of reduction and on the expiry on this period this reduction will have the effect of postponing his future increment of pay. Nothing had been passed with regard to intervening period of termination from service and re-instatement on duty of workman that is with effect from 03.11.1995 to 26.05.1997.

The Chandigarh Govt. Transport Workers' Union espoused the cause of the workman and submitted the demand notice under Section 2(k) of the ID Act demanding the withdrawal of impugned order of punishment bearing No.661/ECM/CTU/II/DT/2K dated 29.09.2000 for grant of all service benefits to the workman as if the said order were never enforce and workman also be paid the pay and arrears along with 12% interest of the intervening period of dismissal from service reinstatement on duty that is with effect from 03.11.1997 along with other service benefits of this period. The Presiding Officer, Labour Court, Union Territory Chandigarh vide its order dated 08.02.2010 (published in Chandigarh Administration Gazette dated May 5, 2010) set-aside the impugned order bearing No. 661/ECM/CTU/II/DT/2K, dated 29.09.2000 and held the workman entitled for the pay & other benefits which were withheld due to pendency of inquiry proceedings and passing of said orders and to refix the pay of the workman accordingly. The management was directed to pay the arrears to the workman within two months of the publication of this award in Government Gazette, failing which the workman is also entitled to receive interest at the rate of 9% per annum on the said amount from the date of award till the date of its realization. The management filed the civil writ petition for quashing the above said award dated 08.02.2010 notified vide notification dated 05.05.2010 before the Hon'ble Punjab and Haryana High Court, Chandigarh, which was allowed with the direction that the respondent-workman would be served with dissent note etc. as above and will be given permission to inspect record and such of the relevant record as he needs to defend himself would be supplied to him in photo copy at his own undertaking so that employee has effective opportunity to defend himself from the stage of his reply to dissent note. Resultantly the General Manager, Chandigarh Transport Undertaking - III, Chandigarh vide memo No.3165/EAM/CTU-III/2013, dated 26.08.2013 supplied the copy of inquiry report and dissent note to the workman. The workman duly replied to the same raising serious contentions against the above said dissent note. The Director Transport, Union Territory Chandigarh vide its order No.689/ECM/CTU11/14, dated 26.02.2014 and in continuation vide order No.6103/ECM/CTU-11/14 dated 15.09.2014 impose the penalty of stoppage of five increments of the workman with cumulative effect and treated the entire dismissal period from service that is with effect from 09.11.1995 to 25.05.1997 as without pay leave for all intents and purposes. That the above said punishment orders are against the principle of natural justice and fair play, violative statutory provisions and consonance with established law and are illegal and void ab-initio on the grounds that the impugned orders are discriminatory. All other three employees, who were also similarly charge-sheeted along with the workman on the complaint of same Shri Waryam Singh, Ex-Convenor, C.T.U. Workers Union Chandigarh, were not proceeded further and no punishment was imposed upon them. The workman was victimized on account of his father's Trade-Union activities. The services of his father Late Sh. Kuldip Singh Ex-Driver C.T.U. Chandigarh were also terminated. His father like the workman also had to struggle from pillar to post that is from appellate authority to the Hon'ble Supreme Court to get the justice. The experience certificate of workman in question has proved genuine by leading the complete evidence of the issuing authority that is Proprietor, M/s Rakesh Automobiles, the Inquiry Officer i.e. Shri S. H. Sood, the then Accounts Officer, CTU, Chandigarh and the then disciplinary authority i.e. Divisional Manager, CTU & Director Transport, Union Territory initially removed the workman from service on the directions of Hon'ble Home Secretary, Chandigarh Administration vide its Memo No.2/1/131/88/HII(2)165333, dated 10.08.1989. The disciplinary authority had not applied its mind while removing the workman from service. It is sheer case of non-application of mind. The statutory right of appeal of the workman has been infringed as the initial order of termination of the workman was issued at the orders of the appellate authority that is the Home Secretary, Union Territory Chandigarh. No serious consideration has been given to the serious contentions raised in the reply to the office memo No.3165/EAM/CTU-III/2013, dated 26-08-2013. There is no mention in the impugned order that the certificate, in question consequent upon the punishment is imposed, is not genuine. The workman's revolve order were passed, as explained above, during the continuation of the departmental enquiry which is illegal, arbitrary, against the statutory provisions and not in consonance with establish law on the point. No misconduct is committed by the workman during the course of his employment and till date record of service is above board and exemplary. The workman's appointment was made by the recruitment board after full verification. It cannot be challenged / altered that too in the absence of any proof of fake experience certificate. Besides above all the disciplinary authorities have categorically and emphatically accepted the report of the enquiry officer which runs that charges are not proved. No lenient view has been taken while passing the impugned order of punishment rather it is too harsh. Inordinate delay in deciding the matter while conducting the departmental enquiry and too much rounds of litigations that is from Hon'ble Home Secretary to Hon'ble Supreme Court and so on, is also violative of natural justice and fair play. The workman has been denied his

right to life as his considerable portion of acquired source of livelihood is forfeited by the impugned orders. Ultimately, it is prayed that impugned order of punishment bearing No.689/ECM/CTU-II/14, dated 26.02.2014 and in continuation of order No.6103/ECM/CTU-II/14, dated 15.09.2014 whereby the workman has been imposed the punishment of stoppage of five increments with cumulative effect and entire dismissal period from service with effect from 09.11.1995 to 25.05.1995 has been treated as without pay leave for intents & purposes be set aside and the workman be granted all the service benefits as if the said order never in force and the workman be paid the pay and arrears along with interest at the rate 12%.

3. The management contested the case of the worker's union and filed written statement raising preliminary objection that the workman has not availed the remedy of review petition as available under Rule 21. On merits, it is pleaded that the workman was appointed as Storekeeper by the management of Chandigarh Transport undertaking with effect from 24.11.1987. The departmental inquiry was concluded on dated 09.12.1988, whereas the orders wherein the workman was removed from his service with immediate effect was passed on 14.08.1989. No charges were stand proved in the inquiry report neither any dissent note were given by the competent authority against the other three workmen, who were similarly charge sheeted alongwith the workman whereas the competent authority has given dissent note against the workman and held guilty for producing fake experience certificate at the time of appointment as he was working with the management during the same period for which he had produced the experience certificate i.e. 23.06.1986 to 22.07.1986 and 23.07.1986 to 02.08.1986. All the three employees who were similarly charge sheeted alongwith the workman on the complaint of Shri Waram Singh were not proceeded further and no punishment was imposed on them as the charges leveled against them in the charge sheet were not proved in the departmental enquiry neither any dissent note with findings of the inquiry report was placed. The disciplinary authority write the dissent note against the inquiry report submitted by the Inquiry Officer as the period for which the workman submitted his experience certificate he was working in the management on daily wages so he had produced fake certificate from M/s Rakesh Automobile as no one can work at two places at same time. Initial orders of termination of the workman was issued by the Hon'ble Secretary Transport, Union Territory Chandigarh but not the Hon'ble Home Secretary, Union Territory Chandigarh. There is no chance that the statutory right of appeal of the workman has been infringed. The departmental inquiry was concluded on 09.12.1988, whereas the orders wherein the workman was removed from his service with immediate effect was passed on 14.08.1989. The said orders were already quashed by the Hon'ble CAT, Chandigarh Bench whereby the services of the workman were removed with the further orders to proceed with the matter from the date of stage of submission of inquiry report and the same was implemented this management in letter spirit. The workman was found guilty of submitting false experience certificate which is itself a grave misconduct on his part. The inquiry report was not accepted by the disciplinary authority and the authority gave his dissent note of the inquiry report. The competent authority by taking the lenient view reduced the punishment from removal of services to stoppage of five increment with cumulative effect. Other averments of the case of the workers' union were denied and ultimately, it is prayed that the claim of the workers' union be dismissed.

4. From the pleadings of the parties, following issues were framed :—

1. Whether the demand raised in the demand notice dated 04.10.2017 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union / workman is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, the management examined Smt. Sushma Rani - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workers' union and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workers' union and to discharge the same learned representative for the workers' union has examined the workman as AW1, who deposed that the impugned order No.689/ECM/CTU-II/14, dated 26.02.2014 Exhibit 'AW-A1', whereby ordered that the punishment of reduction to the minimum of time scale for a period of five years with the further direction that he will not earn increment during the reduction of period and that on the expiry of this period this reduction will have the effect of postponing his future increment of pay awarded to him vide order dated 29.09.2000 is reduced to stoppage of five increments with cumulative effect and in continuation order No. 6103/ECM/CTU-II/2014, dated 15.09.2014 Exhibit 'AW-A-2' further ordered to treat the entire dismissal period from service with effect from 09.11.1995 to 25.05.1997 as without pay leave for all intents and purposes are illegal, arbitrary, discriminatory, unreasonable, without application of mind, violative of statutory provisions against principles of natural justice and fair play and not consonance with established law and is null & void *ab initio*. The disciplinary authority has no power to reduce the punishment under the statutory provisions and orders are non-speaking. No reply to contentions raised in his reply dated 16.09.2013 Exhibit 'AW-A-3' against the show cause notice has been given in the impugned orders. He further deposed that his experience certificate of which compliant was made by Shri Waryam Singh has nowhere been declared fake by any competent authority. The Inquiry Officer vide its inquiry report Exhibit 'AW-A-4' has categorically held that the charges leveled against him are not proved. The then disciplinary authority vide its order No.661/ECM/CTU-II/DT/2K, dated 29.09.2000 Exhibit 'AW-A-5' have also accepted his contentions raised against show cause notice and accepted his experience certificate as genuine. He also deposed that the impugned orders are discriminatory as all other three employees namely Shri Hardeep Singh S/o Shri Kuldeep Singh, Painter Helper, Shri Jaspal Singh S/o Shri Gurdev Singh, DPA and Shri Gurcharan Singh, Storekeeper were also similarly chargesheeted alongwith him on the compliant of same Shri Waryam Singh - Ex-Convener, C.T.U. Workers Union were not proceeded further after submission of inquiry report and no punishment was imposed upon them by the disciplinary authority. He further deposed that he has been victimized on account of his father Shri Kuldeep Singh's trade union activities in CTU and he was also prominent leader of trade union. New paper cuttings are Exhibit 'AW-A-6' to AW-A-8' and this fact is also find mention in the above said inquiry report. He had not engaged himself in any employment of business during the period of his dismissal from service i.e. with effect from 09.11.1995 to 25.05.1997 due to busy in long and costly litigation.

8. Learned representative for the workers' union has argued that the experience certificate has not been declared as fake and bogus by any authority and referred to the conclusion of the inquiry report in which it is held that charges leveled against the workman are not proved and argued that experience certificate is genuine and not forged. Moreover, the Proprietor of M/s Rakesh Automobile has not challenged alleged experience certificate as fake one. Hence, impugned order bearing No.689/ECM/CTU-II/14, dated 26.02.2014 Exhibit 'AW1' and in continuation of order bearing No.6103/ECM/CTU-II/14, dated 15.09.2014 Exhibit 'AW2' are without jurisdiction. Under Rule 5 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 the disciplinary authority has no power to reduce the punishment from reduction to minimum time scale for a period of five years with further directions that the workman will not earn increment during the reduction of period and on the expiry of this period reduction will have the effect of postponing his future increments of pay awarded to the workman vide order dated 29.09.2000 is reduced to stoppage of five increment with cumulative effect. This power lies with the the appellate authority under Rule 19 confirming, enhancing, reducing or setting aside penalty. There is no provision under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rule, 1970 to treat the entire period of service with effect from 09.11.1995 to 25.05.1997 as without pay leave for any of incidence and purpose.

9. It is further argued that no misconduct is committed by the workman during the course of his employment. The Government Servant Conduct Rules, 1966 does not apply to daily wage employees. He placed reliance on citation **Ram Sarup Versus State of Haryana & Others, AIR 1978 SC 1538.**

The workman had completed 25 years of service at the time of impugned order. Hence, impugned order is non-speaking. No reply to serious contentions raised by vide reply dated 16.09.2013 of the workman against the dissent note is mentioned in the impugned order. He placed reliance on citation **Pritam Singh Versus Haryana State Electricity Board, 1995(4) RSJ 289 DB (P&H)**. Hence, impugned orders are discriminatory. Joint departmental inquiry was ordered against the four employees of the department. Against three other employees were not proceeded further after submission of the inquiry report. Hence, reliance is made on citation **Life Insurance Corporation of India Versus Triveni Sharan Mishra, 2015 SCC (L&S) 49** and representative for the workman further argued that earlier the workman's father Late Shri Kuldip Singh - Ex-Driver, CTU was discriminated and dismissed from service. The plea of the management in written statement that the workman had not filed the review application before the appellate authority is wrong and false. Learned representative for the workers' union referred to the order of the Presiding officer, Union Territory Chandigarh dated 08.02.2010 against which the management filed CWP, which was allowed and fresh inquiry from supplying of dissenting note. Hence, the workman has been badly harassed. During the pendency of the departmental inquiry the workman was removed from the service on 04.08.1989 at the instance of the Home Secretary-cum-Secretary Transport i.e. appellate authority under the rules. This order was stayed by the Hon'ble Central Administrative Tribunal, Chandigarh. Thereafter the workman was reinstated on 26.05.1997 and he was served with the show cause notice dated 28.05.1998 by the Director Transport, Union Territory Chandigarh. The workman replied the same on 24.06.1998 and the workman was personally heard on 26.09.2000 and the Director Transport, Union Territory Chandigarh passed the order dated 29.09.2000. He prayed for deciding this issue in favour of the workers' union and against the management.

10. On the other hand, learned Law Officer for the management examined Smt. Sushma Rani - Senior Assistant as MW1, who deposed that the workman was appointed as Storekeeper by the management with effect from 24.11.1987. The departmental inquiry was concluded on 09.12.1988 whereas the orders wherein the workman was removed from his service with immediate effect was passed on 14.08.1989. No charges were stand proved in the inquiry report neither a dissenting note were given by the competent authority against other three workmen, who were similarly charged along with the workman. The competent authority had given dissenting note against the workman and held guilty for producing fake experience certificate at the time of appointment as he was working with the management. During the same period of which he has been produced the experience certificate i.e. from 23.06.1986 to 22.07.1986 and 23.07.1986 to 02.08.1986. She further deposed that all three employees, who were similarly charged along with the workman on the complaint of Shri Waram Singh were not proceeded further and no punishment was imposed on them as the charges leveled against them in the charge sheet were not proved in the departmental inquiry and no dissenting note with the findings of the inquiry report was placed. The case of the workman was decided fairly on merits. The disciplinary authority wrote the dissenting note against the inquiry report as the period of which the workman submitted his experience certificate he was working in the management on daily wages so it is clear that he had produced fake certificate from M/s Rakesh Automobile as no one can work at two places at same time. She also deposed that initial orders of termination of the workman was issued by the Hon'ble Secretary Transport, Union Territory Chandigarh and not the Hon'ble Home Secretary, Union Territory Chandigarh so there is no chance that the statutory right of appeal of the workman has been infringed. The disciplinary authority passed the speaking orders after considering all the contentions raised by the workman in reply to the office Memo No.3165/EAM/CTU-III/2013, dated 26.08.2013. Orders of removal from service was quashed by the Hon'ble CAT, Chandigarh with further orders to proceed with the matter from the date of stage of submission of inquiry report and the same was implemented in letter & spirit. She further deposed that the workman was found guilty of submitting false experience certificate, which is itself a grave misconduct on his part. The competent authority by taking the lenient view reduced the punishment from removal of services to stoppage of five increments with cumulative effect.

11. Learned Law Officer for the management has argued that the present reference has been filed to withdraw the impugned order of punishment dated 26.02.2014 and in continuation of order dated 15.09.2014 but the workman had not availed the remedy of review available under Rule 21. The charges against the workman have been duly proved. The penalty was lawfully imposed by the disciplinary authority and which was proportionate to the gravity of charges leveled and proved against the workman. The competent authority has given dissenting note against the workman and held guilty of submitting fake certificate at the time of appointment. Whereas other three employees, who were similarly charged, were not proceeded as charges

leveled against them are not proved in the departmental inquiry. Hence, the disciplinary authority has passed the speaking order considering the contentions raised by the workman in reply to the office Memo No. 3165/EAM/CTU-III/2013, dated 26.08.2013.

12. After giving my careful consideration to the rival contentions of both the sides, I find that the workman in the present reference has prayed for withdrawal of the impugned order of punishment dated 26.02.2014 and in continuation order dated 15.09.2014 vide which the punishment of stoppage of five increments with cumulative effect was awarded by punishing authority after reducing the penalty from the removal of the service. After the perusal of order dated 10.01.2014 bearing endorsement No. 689/ECM/CTU-II/14, 26.02.2014 Exhibit 'AW1' it is crystal clear that Shri Devinder Singh - Storekeeper (workman) submitted reply to the charge sheet which was considered and found unsatisfactory. A regular department inquiry was ordered to be held against the workman and thereafter the show cause notice was served upon the workman proposing imposing the penalty of termination on his service vide Memo No.392 dated 28.05.1992 and he submitted reply to the dissenting note and he was afforded the opportunity of personal hearing on 26.09.2000. Thereafter the competent authority after considering the entire facts found that the charges leveled against the workman stands proved and ordered reduction to the minimum of time scale for a period of five years and the workman will not earn increment of pay during the period of reduction and on expiry of this period this reduction will have effect the postponing of his future increment of pay. Thereafter the workman being aggrieved by the said order approached the Labour Court through President / General Secretary, Chandigarh Government Transport Workers' Union, who decided the matter in favour of the workman and held the workman entitled for pay and other benefits which were withheld due to pendency of inquiry proceedings and passing of said orders and for fixation of pay of the workman as if the said order was not passed. Thereafter the department challenged the award in the Hon'ble Punjab & Haryana High Court by way of civil writ petition, which was allowed to the extent to supply the dissent note to the workman and gave him permission to inspect the relevant record as he needs to defend himself. Further in compliance of orders of the Hon'ble High Court dated 08.04.2013, copy of dissent note was supplied and inquiry report was supplied and the workman submitted his reply thereto. Thereafter the workman was heard in person on 11.11.1993. He was confronted with the material facts of record and charges against him and given opportunities to with regard to say anything but he did not say anything what he had said earlier. So after considering all the facts & circumstances of order of punishment of reduction to minimum of time scale for a period of five years with the further direction that the workman will not earn increment during reduction of period and on expiry of this period this reduction will have the effect of postponing his future increments of pay awarded to the workman vide order dated 29.09.2000 is reduced to stoppage of five increments with cumulative effect.

13. Hence, there is no procedural lapse or irregularities in passing of impugned order. Further as regards other three employees, who were similarly charged along with the workman were not proceeded as no punishment was imposed on them as charges leveled against in the charge sheet were not proved in the departmental inquiry and no dissenting note with findings of the inquiry report was placed whereas the competent authority has given dissenting note against the workman and held guilty for producing fake experience certificate at the time of appointment as he was working with the management during the same period of which he has produced the experience certificate i.e. from 23.06.1986 to 22.07.1986 and 23.07.1986 to 02.08.1986. Further departmental inquiry was concluded on 09.12.1988 whereas the orders wherein the workman was removed from service with immediate effect was passed on 14.08.1989. The said orders were quashed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench whereby the services of the workman were removed with the further order to proceed with the matter from the date of stage of submission of inquiry report and the same was implemented by in letter & spirit. Hence, the workman was found guilty of submitting false experience certificate, which is itself a grave misconduct on the party and the inquiry report was accepted by the disciplinary authority and the disciplinary authority gave his dissenting note on the inquiry report. Hence, argument by learned representative for the worker's union that no action against the similarly situated employees was taken by the management and the fake certificate has not proved, does not inspire confidence. Moreover, it is well settled law that strict rule of evidence are not applicable to the departmental inquiry proceedings. Only requirement of law is that the allegations against the delinquent officer should be established by such evidence acting upon which a reasonable person acting reasonably and with the objectivity may arrive against the delinquent official. The Court exercising jurisdiction of judicial review would not interfere with the findings of fact arriving at the departmental inquiry proceedings except in a case of malafide or perversity. The court cannot embark upon re-appreciating the evidence weighing the same like an appellate authority. In this connection

law is well settled by the Hon'ble Supreme Court in **Bank of India & Another Versus V. Degala Suryanarayanan, AIR 1991 2407**. Similarly in case **Union of India & Others Versus Himmat Singh Chahar, AIR 1999 SC 1980** Hon'ble Supreme Court of India has held that although the High Court is entitled to exercise its power to judicial review by invoking jurisdiction under Article 226 but would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of principles of natural justice which vitiates the entire proceedings or that the authority exercising jurisdiction had not been vested with jurisdiction under the act. The said power of judicial review cannot be a power of an appellate authority permitting the High Court to re-appreciate the evidence in coming to the conclusion that the evidence is insufficient for the conclusion arrived by the competent authorities.

14. Further reliance is made on citation **Apparel Export Promotion Council Versus A.K. Chopra, AIR 1999 SC 625** in which while considering the scope of interference with the disciplinary matter and punishment the Hon'ble Supreme Court of India has held that the High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power / and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once finding of the fact based on appreciation of evidence recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an appellate authority, over factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities. Even insofar as imposition of penalty of punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court is exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the order are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process.

15. Further competent authority has taken lenient view by reducing the punishment of removal from service to stoppage of five increments with cumulative effect. Hence, the arguments of learned representative for the workers' union that experience certificate is nowhere declared as fake does not hold good as the competent authority while giving dissenting note held the workman guilty of producing the false certificate. In view of the citations relied upon and discussion made above, the authorities relied upon by learned representative for the workers' union is not applicable in the present being distinguishable.

16. In the light of discussion made above, the workers' union has failed to prove that the demands raised in the demand notice dated 04.10.2017 is genuine & justified. Accordingly, this issue is decided against the workers' union and in favour of the management.

Relief :

17. In the light of findings on the issue above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

The 30th November, 2021.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**
Notification

The 17th February, 2022

No. 13/1/9836-HII(2)-2022/2343.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 101/2021, dated 21.12.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

UPENDER PASWAN S/O SHRI PARBHU NATH PASWAN R/O HOUSE NO. 37-A,
BLOCK 'J', LABOUR COLONY NO.4, INDUSTRIAL AREA -I, CHANDIGARH. (Workman)
AND

1. KAPSONS GROUP, PLOT NO. D-196, PHASE 8-B, INDUSTRIAL AREA, SAS NAGAR THROUGH ITS MANAGING DIRECTOR/OCCUPIER AND MANAGER.
2. KAPSONS FASHION PRIVATE LIMITED/KAPSONS RETAIL/AGENCY ETC. PLOT NO. D-196, PHASE 8-B, INDUSTRIAL AREA, SAS NAGAR THROUGH ITS MANAGING DIRECTOR/OCCUPIER AND MANAGER. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).
2. Case of the workman in nutshell is that he was appointed by management No.1 with effect from 24.11.2014 as Chowkidar and was deputed at M/s Kapsons various businesses at Chandigarh. The management intentionally verbally terminated the services of the workman on 26.12.2019 grabbing the legal rights i.e. earned wages, over time allowance, bonus, cash payment in lieu of leave with wages and other legal rights. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act.
3. Upon notice, the management appeared through its Manager HR and settled the dispute with the workman. The Manager HR of the management made the following statement :—

"The management has agreed to settle the matter with the workman Sh. Upender Paswan for a total sum of Rs.41,057/- through Cheque No.007412 dated 07.12.2021 and Cheque No.007413 dated 07.12.2021 HDFC Bank towards all his claim. The workman shall not claim anything any further in any court of law after this settlement. The workman forgive the right of reinstatement/reemployment."

Upon which the workman made the following statement :—

"I have heard the statement of Shri Anuj Deep Parmar. We are ready for settlement as agreed above with the management and I have received today for an amount of Rs.41057/- through Cheque No.007412 dated 07.12.2021 and Cheque No.007413 dated 07.12.2021 HDFC Bank. Accordingly, the matter has been disposed off as per compromise between the parties."

4. In view of the above statements, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(ANSHUL BERRY),

Presiding Officer,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

**CHANDIGARH ADMINISTRATION
HOME DEPARTMENT**

Order

The 22nd February, 2022

No. HII(2)-2022/3227.—Whereas, the Administrator, U.T., Chandigarh is satisfied that any strike in the employment of Engineering Department (Electricity Wing), U.T., Chandigarh, shall affect the generation and maintenance of supply of electricity which is an essential service to the community and is likely to adversely affect the generation and supply of electricity to the public in the Union Territory of Chandigarh;

And, whereas, the Administrator, U.T, Chandigarh is further satisfied that the prohibition of strike by the employees of the said department is in public interest and it is necessary to prohibit a strike;

Now, therefore, in exercise of powers conferred by Sub-section 3 of the East Punjab Essential Services (Maintenance) Act, 1947, the Administrator, U.T., Chandigarh hereby prohibits strike in the employment of Engineering Department (Electricity Wing) U.T., Chandigarh by any of their employees for a period of six months with immediate effect.

Chandigarh :
The 22nd February, 2022.

DHARAM PAL, IAS,
Adviser to the Administrator,
U.T., Chandigarh.

CHANGE OF NAME

I, Kesar Begum, W/o Mohammed Shahajad, # 628/1, Sector 45-C, Burail, Chandigarh, have changed my name to Kaisar Jahan.

[118-1]

I, Md. Shahbaz, S/o Mohammed Shahajad, # 628/1, Sector 45-C, Burail, Chandigarh, have changed my name to Mohammed Shahbaz.

[119-1]

I, Md. Shahzad, S/o Ali Hasan, # 628/1, Sector 45-C, Burail, Chandigarh, have changed my name to Mohammed Shahajad.

[120-1]

I, Shivi, D/o Ashok Kumar, # 2238/25, Street No. 6, Shanti Nagar Manimajra, Chandigarh, have changed my name to Kashish.

[121-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."